

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENNARO RAUSO	:	CIVIL ACTION
	:	
v.	:	
	:	No. 05-813
PATRICIA CROLL, et al.	:	

**ORDER-MEMORANDUM**

AND NOW, this 12th day of September, 2005, it is ordered as follows:

1. Plaintiff's "Motion for Judgment on the Pleadings" is denied. Fed. R. Civ. P. 12(c). Defendants Margaret Walters and Deborah Gaston are dismissed. Infra, at 2 & n.3.
2. The unresponded-to "Motion of Defendants Judge Frank T. Hazel and the Superior Court of Pennsylvania to Dismiss Plaintiff's Amended Complaint" is granted. Fed. R. Civ. P. 12(b)(6).<sup>1</sup>
3. The "Commonwealth Defendants' Motion to Dismiss Plaintiff's Amended Complaint" is granted. Fed. R. Civ. P. 12(b)(6).

Accordingly, the action will be dismissed.<sup>2</sup>

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<sup>1</sup> In deciding a motion to dismiss under Rule 12(b)(6), "all factual allegations and reasonable inferences [are regdred] as true and view[ed] . . . in the light most favorable to" the plaintiff. In re Schering Plough Corp. ERISA Litigation, – F.3d –, –, 2005 WL 1993990, at \*3 (3d Cir., Aug. 19, 2005) (citation omitted). The complaint is properly dismissed only where plaintiff can prove no set of facts entitling him to relief. Id. Certain defendant have already been dismissed by stipulation, including the Delaware County District Attorney's Office, Delaware County Assistant District Attorney Albert Amoroso, and Thomas W. Corbett, Jr. The remaining defendants are Patricia Croll, Michael Spencer and Donald Vaughn, all associated with the State Correctional Institution at Graterford, Judge Frank T. Hazel, Margaret Walters and Deborah Gaston of the Delaware County Court of Common Pleas, and the Pennsylvania Superior Court.

<sup>2</sup> Jurisdiction over plaintiff's state law claims is relinquished. Although discretionary, a decision to exercise pendent jurisdiction "should be declined where the federal claims are no longer viable, absent 'extraordinary circumstances.'" Shaffer v. Bd. of School Directors, 730 F.2d 910, 913 (3d Cir. 1984) (citations omitted).

Filed February 18, 2005, this action by plaintiff plaintiff Gennaro Rauso alleges civil rights violations associated with various deductions taken out of his inmate account while an inmate at SCI Graterford.<sup>3</sup> On June 13, 2005, plaintiff filed an amended complaint consisting of 58 counts alleging civil rights violations under 42 U.S.C. § 1983, all related to the deductions. It also includes a request for injunctive relief against Judge Hazel in the nature of mandamus; declaratory judgments concerning an order of the Superior Court and the validity of a state court conviction for theft by deception; and damages under 42 Pa.C.S. § 8550.

### **Motion for Judgment on the Pleadings:**

On the basis that neither Margaret Walters not Deborah Gaston filed a response to the amended complaint, plaintiff requested a judgment on the pleadings against them. However, their joint response to plaintiff's motion correctly points out that the amended complaint effectively withdraws all claims against them.<sup>4</sup>

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<sup>3</sup> The relevant factual background is as follows. In 1994, plaintiff was convicted on state felony charges and ordered to pay \$30,184 in fines, court costs, and victim compensation. Clerk's List of Fines, Exhibit "A" to Commonwealth Defendants' Motion. The List of Fines states that "defendant was ordered to pay the following charges on or before during parole;" the Commitment Form states that the court costs (\$184) should be paid "during parole." *Id.*; Exhibit "B" to defendants' motion. Between June 2002 and February 2003, while plaintiff was an inmate at SCI Graterford, a total of \$248.37 was deducted from plaintiff's prison account to pay these fines and costs pursuant to Act 84, which authorizes the Department of Correction to make deductions from inmates' accounts to collect court-ordered fines. Amended complaint, ¶¶ 13, 14, 18; 42 Pa.C.S. § 9728. According to plaintiff, the deductions were unauthorized because the judgment against him required that all fines be paid "during parole," and because he was not told in advance that the deductions would be made, amended complaint, ¶¶ 14, 20. Plaintiff learned of the deductions in August, 2002. *Id.*, ¶ 23. Plaintiff objected to the deductions in writing, and no deductions were made after February 2003. *Id.*, ¶¶ 23-26.

<sup>4</sup> The amended complaint withdrew claims related to alleged interference with plaintiff's efforts to litigate the validity of a state court theft by deception conviction because those claims are the subject of an appeal pending before the Third Circuit Court of Appeals, C.A. No. 05-2441. Amended complaint, ¶ 87 and n.1. The amended complaint states that Ms. Gaston "is being named in this action for her actions and inactions with respect to plaintiff's claims that she has interfered with or has deprived, plaintiff's constitutional right to appeal the denial of his petition to intervene in the matter Jefferson Bank v. Evans, (Del. Co. C.P. No. 99-14645)." However, no claim relating to that litigation is mentioned in the amended complaint. Because

### **Motion to Dismiss of Judge Hazel and the Pennsylvania Superior Court:**

Generally, the 11<sup>th</sup> Amendment bars plaintiff's claims - legal and equitable - against judicial defendants. Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 and 102 (1984); Edelman v. Jordan, 415 U.S. 651, 662-63 (1974); Alabama v. Pugh, 438 U.S. 781, (1978). Pennsylvania courts and judicial officers, as part of the Commonwealth government, are also protected by sovereign immunity. 1 Pa.C.S.A. § 2310; 42 Pa.C.S.A. §§ 102; 8521. In light of these procedural bars, it is unnecessary to discuss the judicial defendants' substantive arguments. All claims against Judge Hazel and the Pennsylvania Superior Court must be dismissed.<sup>5</sup>

### **Motion to Dismiss of the Commonwealth Defendants:**

- The amended complaint alleges that plaintiff's due process rights were violated by defendants Croll, Vaughn and Spencer when deductions from his inmate account were made without notice or pre-deduction hearing. Amended complaint, ¶ 20. However, Pennsylvania courts have held that no hearing is required before Act 84 deductions are taken. Boyd v. Commonwealth, 831 A.2d 779, 782 (Pa. Cmwlth. 2003). No due process violation occurs when deductions are made without first permitting the inmate to object. Ingram v. Newman, 830 A.2d 1099, 1103 (Pa. Cmwlth. 2003). See also George v. Beard, 824 A.2d 393, 396 (Pa. Cmwlth. 2003) (fines and court costs are part of inmate's conviction and may be deducted from an inmate's account under Act 84).

- The amended complaint also alleges that defendants violated plaintiff's due process rights by making in-custody deductions when the judgment of sentence required only that the fines and costs be paid during his

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Ms. Gaston was not involved in the deductions from plaintiff's inmate account and is not named in claims against Judge Hazel or the Pennsylvania Superior Court, she, as well as Ms. Walters, must be dismissed from this action.

<sup>5</sup> On August 16, 2005, the judicial defendants filed their motion. Under applicable local rules, plaintiff's response was due on or before September 2, 2005. Plaintiff has not filed a response and has not requested an extension of the deadline.

parole - and defendants were not entitled to rely on an erroneous Commitment Form. Amended complaint, ¶¶ 20, 26. The List of Fines and the Commitment Form are confusing and, as to \$184 in costs, they are contradictory regarding time of payment. See Exhibits “A” and “B” to defendants’ motion.<sup>6</sup> However, even assuming, as alleged, that the fines and costs were to be paid while plaintiff was on parole, and that the deductions to his inmate account were made in error, qualified immunity protects these defendants unless their error was unreasonable. Carswell v. Borough of Homestead, 381 F.3d 325, 242 (3d Cir. 2004) (inquiry is “whether the officer made a reasonable mistake as to what the law requires.”). Even where an official’s conduct violates a plaintiff’s rights, the official is immune from liability if the conduct resulted from a mistake in judgment. Hunter v. Bryant, 502 U.S. 224, 228- 29 (1991).

Here, defendants had no reason to believe they could not rely on the Commitment Form and the List of Fines in making deductions from plaintiff’s account.<sup>7</sup> An erroneous interpretation of those contradictory documents will not strip them of qualified immunity. Hunter, 502 U.S. at 229 (qualified immunity provides “ample room for mistaken judgments). The claims against them must be dismissed.

BY THE COURT:

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Edmund V. Ludwig, J.

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<sup>6</sup> Plaintiff did not attach the List of Fines or the Commitment Form to the amended complaint. However, matters of public record and documents referenced in the complaint may be considered when deciding a Rule 12 motion. Pryor v. Nat’l Collegiate Athletic Ass’n, 288 F.3d 548, 560 (3d Cir. 2002); Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994). The List of Fines states “defendant was ordered to pay the following charges on or before during parole [sic].” Exhibit “A”. The Commitment Form states costs of \$184 are to be paid during parole; no payment schedule is included for the \$30,000 fines. Exhibit “B”.

<sup>7</sup> In Boyd v. Commonwealth, 831 A.2d 779, 783 n.6 (Pa. Cmwlth. 2003), decided after deductions to plaintiff’s account were made, the Commonwealth Court specifically held that prison officials could rely on Commitment Forms to make Act 84 deductions.